



September 8, 2008

Bill Hauser
Chief, Regulations and Standards Branch
Minerals Management Service
381 Elden Street, MS-4024
Herndon, VA 20170

Re: Alternative Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf, 1010-AD30; Proposed Rules

Dear Mr. Hauser:

The California Resources Agency would like to submit the following comments on the proposed rules for Alternative Energy and Alternate Use of Existing Facilities on the Outer Continental Shelf. These comments were drafted in coordination with the following State of California offices and departments: the California State Lands Commission, the California Department of Fish and Game, the California Coastal Commission, the California Ocean Protection Council and the California Energy Commission. Please note that a number of these departments will be submitting more detailed comments to the Minerals Management Services through separate correspondence.

Our comments focus on the following broad topics, including but not limited to, overlapping MMS and Federal Energy Regulatory Commission (FERC) regulatory processes, importance of early MMS consultation with state and local agencies during the National Environmental Policy Act (NEPA) review process, need for coordinated data collection and research between the MMS and state agencies, need to maintain sufficient funding and staff capacity to conduct compliance inspections, status of the state's Artificial Reef Program, Coastal Zone Management Act (CZMA) compliance relative to alternate uses of existing oil and gas facilities, state aquaculture regulations, and the pending National Offshore Aquaculture Act of 2007.

Alternative Energy

Federal Regulatory Conflict

The proposed rule for the MMS Alternative Energy Program overlaps the licensing rules put forth by FERC. Project proponents interested in the outer continental shelf (OCS) region are currently applying for both MMS and FERC licenses. This places an unnecessary burden on California's resource agencies to participate in duplicative project review processes. In addition, there is a federal CZMA consistency requirement

1416 Ninth Street, Suite 1311, Sacramento, CA 95814 Ph. 916.653.5656 Fax 916.653.8102 <http://resources.ca.gov>



that the MMS consider project impacts in state territorial waters, currently under FERC jurisdiction, even if the license applies to the OCS component of a project. We request that the MMS streamline and clearly define the roles of the two agencies through a Memorandum of Agreement before approving the Alternative Energy and Alternate Use Program rules.

State and Local Coordination with the MMS

Impacts to California's environment and to marine users are key concerns for state resources agencies and local coastal communities. These concerns can often be avoided or mitigated through project design and siting changes early in the project's development. We request that the MMS consult with the California Coastal Commission, the California Department of Fish and Game, the California State Lands Commission, the California Energy Commission, the California Public Utilities Commission, and relevant city and county government representatives through an interagency working group prior to, and during, the NEPA consultation process and the CZMA federal consistency process. We further request that the MMS coordinate with the California State Lands Commission to determine how California Environmental Quality Act (CEQA) compliance can be met through the NEPA process. A streamlined environmental review process and early consultations to discuss Site Assessment Plans will assist proponents in understanding and addressing agency concerns during the design and siting phase, and provide for a more timely and efficient licensing process.

The MMS's proposed rule relies heavily on adaptive management, with conditions to be imposed on the project proponent under the NEPA review process, including environmental monitoring and compliance requirements. The California Coastal Commission will play a lead role in the process through the federal CZMA consistency review. In addition, we request that the MMS also consult with the relevant California resource departments (listed above) to ensure that all proposed projects meet all state resource management and protection goals.

Research and Data Collection

The development of license conditions and compliance requirements will require substantial research and data collection and comprehensive baseline characterizations of project sites. Consequently, we request that the MMS coordinate with California's resource departments to determine research and information gaps. These departments may have existing data useful for avoiding impacts, and/or be willing to work with the MMS to leverage funds for additional studies and data collection. The proposed rule also states that the MMS will maintain confidentiality of all information submitted by lessees. While some information belonging to the applicant may warrant a level of confidentiality, we strongly request that environmental and socio-economic data be made public, or at a minimum, provided to state agency staff to be used for internal reviews of project impacts.

Monitoring and Compliance

Subpart H, Section 285.820-824 of the proposed rule states that monitoring and compliance inspections will be conducted by the MMS and by self-inspection. Inspection of offshore alternative energy devices will be challenging, but necessary for detecting negative impacts to the marine and coastal environment. We strongly request that MMS staff and/or independent contractors maintain funding and staff capacity to conduct compliance inspections. Self-inspections by the license holder are not sufficient for determining compliance.

Alternate Uses of Existing Facilities

State Artificial Reef Program

Existing rule in 30 CFR §250.1730 states that the Regional Supervisor of the MMS may grant a departure from the requirement to remove a platform or other facility by approving a partial structure removal or toppling in place for conversion to an artificial reef or other use if the following conditions are met: (a) the structure becomes part of a state artificial reef program, and the responsible state agency acquires a permit from the U.S. Army Corps of Engineers (USACE) and accepts title and liability for the structure; and (b) all U.S. Coast Guard navigational requirements for the structure are satisfied.

The proposed rule removes the phrase "or other use" from the introductory paragraph of §250.1730 but makes no other changes. As such, it is our understanding that partial structure removal or toppling in place for conversion to an artificial reef would remain under the state's Artificial Reef Program as permitted by the USACE, not under a program administered by the USACE. If this is indeed the case, it is important to note that the existing California Artificial Reef Plan does not include platforms as an allowed artificial reef structure. Amendments to state law and the California Artificial Reef Program neither allows platforms to be used as artificial reefs, nor is it authorized to operate in federal waters.

CZMA – Consistency Certification

The proposed rules pertaining to alternative energy projects indicate that the CZMA applies and that a Consistency Certification is required. However, the proposed rules include no parallel requirement for alternate uses of existing facilities. Instead, the proposed rules state that the MMS will consider on a case-by-case basis if the CZMA applies and if a Consistency Certification is required. Consequently, we believe that the proposed rules should be modified to specifically include a Consistency Certification as a requirement for all alternate uses of existing facilities.

Aquaculture

State Regulations

The California Department of Fish and Game has a strong regulatory structure for aquaculture in state statute (i.e., §15000, et seq., of the Fish and Game Code and Title

Bill Hauser
September 8, 2008
Page 4

14 of the California Code of Regulations). Because of this statutory authority, we believe that the wording in §285.1006 on page 39436 of the proposed rule should be changed from "MMS may partner with other Federal agencies ... to ensure proper regulation ..." to "MMS may partner with other State and Federal agencies ... to ensure proper regulation ..." (emphasis added).

Pending Federal Legislation

We acknowledge that currently there is no comprehensive federal regulatory framework dealing with offshore aquaculture on the OCS. However, if the National Offshore Aquaculture Act of 2007 were enacted it would create a regulatory framework within the U.S. Department of Commerce for aquaculture operations in U.S. federal waters, three to 200 miles off the coast, and expand a research program for all of marine aquaculture, not just offshore. If this act became law, we would encourage the MMS to work with the Department of Commerce to ensure that no duplicative regulations are put in place.

If you need any clarification regarding these comments, please contact Brian Baird, Assistant Secretary for Ocean and Coastal Policy, by phone at (916) 657-0198 or by e-mail at brian.baird@resources.ca.gov.

Sincerely,



Mike Chrisman
Secretary for Resources